

The State of New Hampshire

Opinion

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ATTORNEY GENERAL
WARREN B. RUDMAN
DEPUTY ATTORNEY GENERAL
DAVID H. SOUTER
ASSISTANT ATTORNEYS GENERAL



IRMA A. MATTHEWS
THOMAS B. WINGATE
JOSEPH A. DICLERICO, JR.
ROBERT V. JOHNSON, II
DONALD W. STEVER, JR.
DAVID W. HESS
JOHN C. BOECKELER
THOMAS D. RATH

Attorney General

Concord

ATTORNEYS
JOHN T. PAPPAS
MICHAEL P. BENTLEY
ROGER G. BURLINGAME
CHARLES G. CLEAVELAND
EDWARD A. HAFFER
JOHN L. AHLGREN
GREGORY H. SMITH
RICHARD V. WIEBUSCH

August 6, 1974

Commissioner George T. Gilman
Department of Resources and Economic
Development
State House Annex
Concord, New Hampshire 03301

Dear Mr. Gilman:

Question has arisen about the scope of the law-enforcement authority of the Bureau of Off Highway Recreational Vehicles. The source of that authority is RSA 269-C:13,II (supp), which provides:

The commissioner of the department of resources and economic development shall appoint a supervisor of the bureau of off-highway recreation vehicles, who shall have additional duties as state parks and forest security officer and shall be classified in the state police and fish and game law enforcement series with authority under RSA 594. The commissioner of the department of resources and economic development shall, at his discretion, also appoint bureau of off-highway recreation vehicles area supervisors and foremen, who shall be peace officers for the purposes of RSA 594.

The general question before us may be transformed into two specific questions: (1) Is the subject matter of the bureau's enforcement jurisdiction limited to incidents involving off highway recreational vehicles (OHV's)? and (2) Is the physical area of the bureau's enforcement jurisdiction limited to State parks and forests? We answer yes to both questions.

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RSA 269-C:13,II (supp) is less than perspicuous. Its legislative history, moreover, imparts no clear sign of its intended effect. (See the testimony before the Senate Recreation and Development Committee on June 15, 1973 concerning HB 10, the source of RSA 269-C (supp).) Under those circumstances, we have had to answer the above two questions on the basis of certain practical considerations, set out below.

First, if any of the bureau's enforcement officers made an arrest either for an incident not involving OHRV's or in a place other than a State park or forest, he might be liable for false imprisonment. Since the enforcement provision arises in the OHRV chapter, which in turn is in the Motor Vehicles title, it would seem at least plausible to conclude that the bureau's enforcement officers do not have any wider subject-matter jurisdiction than would be necessary to deal with incidents involving OHRV's. For us to conclude they had wider subject-matter jurisdiction, we would require plain and unmistakable statutory authority. We find none. As to the place of an arrest, the statute makes the bureau supervisor nothing more than "state parks and forest" security officer. We think the quoted words limit his area jurisdiction. For us to conclude that he had wider area jurisdiction, we would again require plain and unmistakable statutory authority. Again, though, we find none. Although the statute is silent on the area jurisdiction of the subordinates of the bureau supervisor, we conclude that their area jurisdiction is no wider than that of the bureau supervisor himself. Any other result would be anomalous, if not nonsensical.

Second, we see nothing in RSA 269-C (supp), and more particularly nothing in its sections 13 (supp) or 18 (supp), that contemplates that the bureau's enforcement officers will have training in enforcement of the full range of the criminal law. (See also 1973 Laws 560:6, I.) The criminal law is broad and complex. For those men to enforce its full range, and not just RSA 269-C (supp), extensive and continuing training would be absolutely necessary. That training, furthermore, would be no less necessary if the men's area jurisdiction were restricted to State parks and forests. Had the Legislature intended the men to have so great an enforcement responsibility, even if in no other places than State parks and forests, we must assume that the Legislature would have plainly provided for the necessary training. Its failure so to do is reason to conclude it did not intend to impose such a responsibility on bureau personnel. We have trouble too, in the absence of clear legislative expression to the contrary, concluding that the Legislature intended to couple with the heavy administrative responsibilities of the

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bureau (see section 3 (supp)) responsibilities in law enforcement that would require such extensive and continuing training.

Third, paragraph I of RSA 269-C:13 (supp) leaves no doubt that other law enforcement officers will enforce RSA 269-C (supp) in all places where those officers have area jurisdiction. Although, with possible exceptions for certain officers including fish and game conservation officers, that result would have obtained even without paragraph I, that paragraph does call attention to the fact there will be no dearth of men to enforce RSA 269-C (supp) in all parts of the State. Thus, no practical reason exists to construe paragraph II broadly, as authorizing bureau enforcement officers to enforce RSA 269-C (supp) outside State parks and forests.

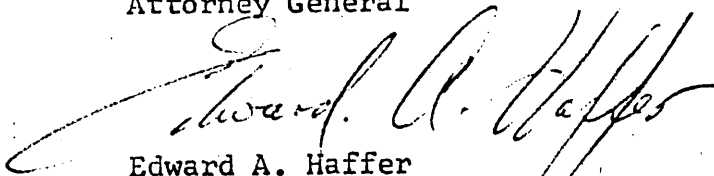
On the basis of those three considerations, we think it appropriate to construe narrowly RSA 269-C:13,II (supp). Furthermore, given the dangers inherent in law enforcement and given the fact that the subject-matter jurisdiction and area jurisdiction of existing police agencies leave no voids in law enforcement in the State, we think it sound policy to construe narrowly any new statute that fails to make plain and unmistakable the law-enforcement jurisdiction of any new agency.

We stress that this opinion addresses only the law-enforcement provisions of section 13 (supp), not the administrative provisions of section 3 (supp) and other sections.

Sincerely,



Warren B. Rudman
Attorney General



Edward A. Haffer
Assistant Attorney General

klc